

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Daniel Jenkins

v.

Case No. 20-cv-803-PB
Opinion No. 2022 DNH 028

FCI Berlin, Warden

ORDER

Daniel Jenkins petitioned for a writ of habeas corpus (Doc. No. [1](#)) in this Court, under [28 U.S.C. § 2241](#), while incarcerated at the Federal Correctional Institution in Berlin, New Hampshire. Jenkins asks that I order the Warden to expunge a disciplinary offense for possessing a cell phone from his prison record. Jenkins lost forty-one days of good conduct time due to that offense. In a comprehensive prior order (Doc. No. [19](#)), I denied Jenkins's motion for summary judgment on his claims (Doc. No. [7](#)). The Warden has filed both an initial motion for summary judgment (Doc. No. [15](#)) and a supplemental motion (Doc. No. [21](#)) on all claims.¹ At issue are Jenkins's claims that (1) there was insufficient evidence to support the disciplinary finding, (2) the hearing officer violated his due process rights by denying his request to present witnesses, (3) the hearing officer violated his due process rights by not providing him

¹ I rely on the same uncontested factual background as in my prior order. See Doc. No. [19](#), 2-6.

with a forensic report about the cell phone, and (4) the hearing officer did not permit him to present a written document outlining his defenses.

The warden is entitled to summary judgment even when I construe the record "in the light most flattering to" Jenkins as the nonmoving party. See [Thompson v. Gold Medal Bakery, Inc.](#), 989 F.3d 135, 141 (1st Cir. 2021) (quoting [Theidon v. Harvard Univ.](#), 948 F.3d 477, 494 (1st Cir. 2020)). As I explained in detail in my prior order, there is enough undisputed evidence of Jenkins's constructive possession of contraband to meet the limited "some evidence" standard for prison disciplinary hearings, see [Superintendent Mass. Corr. Inst. v. Hill](#), 472 U.S. 445, 454 (1985), and he has put forward no evidence that additional witnesses, a cell phone forensic report, or consideration of his written document would have a material impact on the hearing officer's finding. See [Street v. Rakiey](#), 989 F.2d 484 (1st Cir. 1993) (unpublished table decision).

The Warden's motion succeeds because there is "no genuine dispute as to any material fact" in the record, and the Warden is entitled to judgment as a matter of law. [Theidon](#), 948 F.3d at 494 (quoting [Johnson v. Univ. of Puerto Rico](#), 714 F.3d 48, 52). Accordingly, I will grant the Warden's motions for summary judgment (Doc. Nos. [15](#), [21](#)).

SO ORDERED.

/s/ Paul Barbadoro
Paul Barbadoro
United States District Judge

March 11, 2022

cc: Counsel of Record